

SERVICE DATE – LATE RELEASE DECEMBER 19, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 395X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY–ABANDONMENT EXEMPTION –IN CHEROKEE COUNTY, KS,
AND JASPER COUNTY, MO

Decided: December 19, 2002

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon and discontinue service over a 28.25-mile line of railroad between milepost 343.55 in Columbus, Cherokee County, KS, and milepost 315.30 in Carthage, Jasper County, MO.¹ By decision served June 21, 2002, the proceeding was reopened and the City of Carl Junction and the Joplin Trail Coalition (JTC) were authorized to negotiate an interim trail use/rail banking agreement with BNSF, pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).² The trail use negotiating period is scheduled to expire on December 19, 2002.

On November 22, 2002, BNSF filed a request for a 180-day extension of the trail use negotiation period until June 17, 2003. BNSF states that it is in negotiations with a trail organization and it has been determined that additional time is needed to finalize a potential trail transaction.

On December 10, 2002, Cherokee County (Kansas) Landowner's Association (Association)³ filed a statement in opposition to an extension of the trail use negotiating period, arguing instead that the

¹ Notice of the exemption was served and published in the Federal Register on May 23, 2002 (67 FR 36298).

² The June 21 decision also imposed a public use condition (which will expire on December 19, 2002), several environmental conditions, and a historic preservation condition. By decision served November 20, 2002, the historic preservation condition was removed. The November 20 decision also noted that the other conditions imposed in the June 21 decision remain.

³ The Association states that it is composed of over sixty individuals owning property adjacent to the right-of-way.

right-of-way should be allowed to revert to the adjacent landowners. The Association asserts: (1) that recreational trails have not been successful in that region of the state; (2) that JTC lacks the financial and human resources that will be required to: (a) develop the trail to useable status, (b) comply with Kansas state law regarding interim trail use, and (3) comply with Cherokee County bonding requirements for recreational trails; and (3) that JTC has indicated that it is no longer interested in pursuing trail use for the part of the line located in Kansas because of the financial and legal burdens that would be imposed by the state and county.

BNSF filed a response to the Association by facsimile on December 18, 2002. BNSF states that it is still in the process of negotiating with JTC and urges the Board to grant its request for an extension of the negotiating period. BNSF also states that it will give serious consideration to the expressions of concern from the community regarding the Kansas portion of the right-of-way. The railroad states that it believes that a trail may still be accommodated while taking into account the concerns of the Association.

Under the Trails Act and our implementing rules, if a prospective trail user requests a trail condition and the carrier indicates its willingness to negotiate a trail agreement, the Board's role under the Trails Act is largely ministerial. Goos v. ICC, 911 F.2d 1283 (8th Cir. 1990) (Goos). To invoke the Trails Act, a prospective trail sponsor need only file a request accompanied by the necessary statement of willingness to assume liability and acknowledgment that interim trail use is subject to possible reinstitution of rail service. See National Ass'n of Reversionary Property Owners v. STB, 158 F.3d 135, 138 (D.C. Cir 1998); 49 CFR 1152.29(a) and (d). If the railroad indicates its willingness to negotiate, the Board must then issue a notice of interim trail use. Goos, 911 F.2d at 1295.

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period may be extended.⁴ An extension of the negotiating period will promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the negotiating period will be extended to June 17, 2003.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The trail use negotiating period is extended to June 17, 2003.

⁴ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary